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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID HAM, CYNTHIA HAM-
SANCHEZ and their martial
community, and MICHAEL HAM,

Plaintiffs,

v.

CITY OF SPOKANE,

Defendant.

No. 2:19-cv-00236-TOR

DEFENDANT CITY OF
SPOKANE'S AMENDED
ANSWER AND AFFIRMATIVE
DEFENSES

Defendant City of Spokane (the "City") answers the Complaint of
Plaintiffs David Ham, Cynthia Ham-Sanchez, and Michael Ham (collectively
"Plaintiffs") as follows:

I. INTRODUCTION

The allegations in this paragraph constitute mostly introductory material
and legal argument and conclusions to which no response is required. To the

1 extent a response is required, the City admits that a tent encampment existed in
2 front of Spokane City Hall during November and December 2018, and that at
3 least some members of the encampment intentionally did so as a self-designated
4 protest. The City further admits that it conducted a clean-up of the tent
5 encampment on December 9, 2018, after it provided the unhoused individuals in
6 the encampment with written notice, an opportunity to speak with the City to
7 request assistance and additional time to move, and an opportunity to move any
8 possessions on the day of the clean-up. Regarding the allegations about
9 Plaintiffs, the City lacks sufficient knowledge or information to form a belief
10 about the truth of those allegations and therefore denies the same. The City
11 denies the remaining allegations in the introduction.

12 II. PARTIES

13 1. The City lacks sufficient knowledge or information to form a belief
14 about the truth of the allegations in paragraph 1 and therefore denies the same.

15 2. The City lacks sufficient knowledge or information to form a belief
16 about the truth of the allegations in paragraph 2 and therefore denies the same.

17 3. The City lacks sufficient knowledge or information to form a belief
18 about the truth of the allegations in paragraph 3 and therefore denies the same.

19 4. The City admits that it is a municipal corporation organized under
20 the laws of the State of Washington. As such, it has a duty to defend and

1 indemnify its officials and employees for actions performed within the scope of
2 their duties. All remaining allegations in paragraph 4 are denied.

3 **III. JURISDICTION AND VENUE**

4 5. The City admits that this Court has subject matter jurisdiction, but
5 denies that any relief is proper or should be granted.

6 6. The City admits the allegations in paragraph 6.

7 **IV. OPERATIVE FACTS**

8 7. The City admits that House of Charity is located in Spokane, WA
9 and provides shelter and other services for unhoused persons pursuant to a
10 contract with the City. The City further admits that House of Charity began
11 offering 24/7 shelter services in 2016, that it temporarily ceased 24/7 services in
12 mid-2017, and that it then resumed 24/7 services until September of 2018, after
13 which it offered daytime and nighttime services but not 24/7 services.

14 8. The City admits that it made a joint decision with House of Charity
15 in 2018 to cease 24/7 services, but to maintain certain other daytime and
16 nighttime shelter services at the site. The City denies the remaining allegations
17 in paragraph 8.

18 9. The City admits that the cessation of 24/7 services at House of
19 Charity resulted in a temporary reduction of overnight shelter space, and
20 otherwise denies the allegations in paragraph 9.

1 10. The City denies the allegations in paragraph 10.

2 11. The City admits the allegations in paragraph 11.

3 12. The City admits the allegations in paragraph 12.

4 13. The City admits the allegations in paragraph 13.

5 14. The City admits the allegations in paragraph 14.

6 15. The City admits the allegations in paragraph 15.

7 16. The City admits the allegations in paragraph 16.

8 17. The City denies the allegations in paragraph 17.

9 18. The City denies the allegations in paragraph 18 as they are not
10 accurate for all warming centers at all times.

11 19. The City admits the allegations in paragraph 19.

12 20. The City admits that homeless shelters provide temporary shelter to
13 unhoused individuals, and otherwise denies the allegations in paragraph 20 as
14 Plaintiffs' self-serving characterization of homeless shelters is both overbroad
15 and incomplete.

16 21. The City admits that House of Charity has operated a homeless
17 shelter and otherwise denies the allegations in paragraph 21.

18 22. The City admits that warming centers offer temporary shelter
19 during cold weather months and otherwise denies the allegations in paragraph
20 22.

1 23. The City admits the first sentence of paragraph 23. The second
2 sentence of paragraph 23 represents legal argument to which no response is
3 required. To the extent a response is required, the City denies the same.

4 24. The City admits that warming centers were not open during the
5 morning of December 9, 2018. The City denies the remaining allegations in
6 paragraph 24.

7 25. The City denies the allegations in paragraph 25.

8 26. Paragraph 26 does not contain any specific allegations as to the
9 City and the City does not have sufficient knowledge to respond as to every
10 unhoused person in every circumstance and at all times, therefore the City
11 denies Plaintiffs' overly broad and general allegations in paragraph 26.

12 27. The City admits that extreme weather can, in a general sense, create
13 difficulty of movement. The City denies that in late 2018 and early 2019, the
14 opening of warming centers was triggered based on particular day-to-day
15 weather. The City otherwise denies the allegations in paragraph 27 as overly
16 generalized and vague.

17 28. The allegations in paragraph 28 contain a legal conclusion to which
18 no response is required and quote a section of the Spokane Municipal Code,
19 which speaks for itself.
20

1 29. The allegations in paragraph 29 quote a section of the Spokane
2 Municipal Code, which speaks for itself.

3 30. The City denies the allegations in paragraph 30.

4 31. The allegations in paragraph 31 quote a section of the Spokane
5 Municipal Code, which speaks for itself.

6 32. The allegations in paragraph 32 contains legal conclusions and
7 argument to which no response is required. To the extent a response is required,
8 the City denies the allegations in paragraph 32.

9 33. The City lacks knowledge or information sufficient to form a belief
10 about the truth of the allegations in paragraph 33 and therefore denies the same.

11 34. The City admits that Spokane City Hall is located at 808 W.
12 Spokane Falls Blvd, Spokane, WA, and that an encampment materialized at that
13 location in November and December of 2018. The City otherwise lacks
14 knowledge or information sufficient to form a belief about the truth of the
15 allegations in paragraph 34 and therefore denies the same.

16 35. The City admits that an encampment that some referred to as
17 “Camp Hope” was located in front of Spokane City Hall in 2018 and that at least
18 some members of the encampment expressed disagreement with the City’s laws
19 and policies. The City denies the remaining allegations in paragraph 35.

1 36. The City lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations in paragraph 36 and therefore denies the same.

3 37. The City lacks knowledge or information sufficient to form a belief
4 about the truth of the allegations in paragraph 37 and therefore denies the same.

5 38. The City lacks knowledge or information sufficient to form a belief
6 about the truth of the allegations in paragraph 38 and therefore denies the same.

7 39. The City admits that the Spokane Police Department posted Notices
8 to Remove Property on or near the tents at the encampment outside City Hall on
9 November 24, 2018. The City lacks knowledge or information sufficient to
10 form a belief about the truth of the remaining allegations in paragraph 39 and
11 therefore denies the same.

12 40. The allegations in paragraph 40 relate to a notice the City posted.
13 The City responds that the notice speaks for itself.

14 41. The City admits that the Spokane Police Department posted Notices
15 to Remove Property on or near the tents at the encampment outside City Hall on
16 December 6, 2018. The City further responds that the notice speaks for itself.

17 42. The allegations in paragraph 42 relate to a notice the City posted.
18 The City responds that the notice speaks for itself.

19 43. The City lacks knowledge or information sufficient to form a belief
20 about the truth of the allegations in paragraph 43 and therefore denies the same.

1 44. The allegations in paragraph 44 constitute legal argument and
2 conclusions to which no response is required. To the extent a response is
3 required, the City denies the same.

4 45. The City lacks knowledge or information sufficient to form a belief
5 about the truth of the allegations in paragraph 45 and therefore denies the same.

6 46. The City lacks knowledge or information sufficient to form a belief
7 about the truth of the allegations in paragraph 46 and therefore denies the same.

8 47. The City admits that on December 7, 2018 it gave any unhoused
9 individual that requested a hearing the opportunity to request assistance or
10 additional time to move any personal possessions located at the encampment
11 outside City Hall.

12 48. The City admits that Captain David Singley was one of the City's
13 representatives in each of the hearings that took place, and that Captain Singley
14 oversaw the Police Department's involvement in the subsequent encampment
15 clean-up, and otherwise denies the allegations in paragraph 48.

16 49. The City admits that Captain Singley confirmed the City's order of
17 removal at the end of each hearing that was conducted.

18 50. The City admits that a City Council member and some other
19 members of the community gathered outside of Spokane City Hall on December
20 8, 2018. The City lacks sufficient knowledge or information to form a belief as

1 to each individual participant's motivation for doing so, and therefore denies the
2 remaining allegations of paragraph 50.

3 51. The City admits the allegations in paragraph 51.

4 52. The City lacks sufficient knowledge or information to form a belief
5 about the truth of the allegations in paragraph 52 and therefore denies the same.

6 53. The City lacks sufficient knowledge or information to form a belief
7 about the truth of the allegations in paragraph 53 and therefore denies the same.

8 54. The City lacks sufficient knowledge or information to form a belief
9 about the truth of the allegations in paragraph 54 and therefore denies the same.

10 55. The City admits that a community-based work crew participated in
11 the clean-up of the site outside City Hall on December 9, 2018. The City denies
12 the remaining allegations of paragraph 55.

13 56. The allegations in paragraph 56 contain legal conclusions and legal
14 argument to which no response is required. To the extent a response is required,
15 the City denies those allegations.

16 57. The allegations in paragraph 57 relate to the City's Notice to
17 Remove Property, which speaks for itself.

18 58. The allegations in paragraph 58 contain legal conclusions and legal
19 argument to which no response is required. To the extent a response is required,
20 the City denies those allegations.

1 59. The City denies the allegations in paragraph 59.

2 60. The allegations in paragraph 60 attempt to characterize a section of
3 the Spokane Municipal Code, which speaks for itself. Paragraph 60 also
4 contains legal argument and conclusions to which no response is required.

5 61. The allegations in paragraph 61 relate to a section of the Spokane
6 Municipal Code. The City responds that the code speaks for itself.

7 62. Paragraph 62 does not contain any specific allegations as to the
8 City and the City does not have sufficient knowledge to respond as to every
9 unhoused person in every circumstance and at all times, therefore the City
10 denies Plaintiffs' overly broad and general allegations in paragraph 62.

11 63. Paragraph 63 does not contain any specific allegations as to the
12 City and the City does not have sufficient knowledge to respond as to every
13 unhoused person in every circumstance and at all times, therefore the City
14 denies Plaintiffs' overly broad and general allegations in paragraph 63.

15 64. Paragraph 64 does not contain any specific allegations as to the
16 City and is overly generalized and vague.

17 65. Paragraph 65 does not contain any specific allegations as to the
18 City and is overly generalized and vague.

19 66. Paragraph 66 does not contain any specific allegations as to the
20 City and the City does not have sufficient knowledge to respond as to every

1 unhoused person in every circumstance and at all times, therefore the City
2 denies Plaintiffs' overly broad and general allegations in paragraph 66.

3 67. Paragraph 67 does not contain any specific allegations as to the
4 City and the City does not have sufficient knowledge to respond as to every
5 unhoused person in every circumstance and at all times, therefore the City
6 denies Plaintiffs' overly broad and general allegations in paragraph 67.

7 68. Paragraph 68 does not contain any specific allegations as to the
8 City and the City does not have sufficient knowledge to respond as to every
9 unhoused person in every circumstance and at all times, therefore the City
10 denies Plaintiffs' overly broad and general allegations in paragraph 68.

11 69. Paragraph 69 does not contain any specific allegations as to the
12 City and the City does not have sufficient knowledge to respond as to every
13 unhoused person in every circumstance and at all times, therefore the City
14 denies Plaintiffs' overly broad and general allegations in paragraph 69.

15 70. Paragraph 70 does not contain any specific allegations as to the
16 City and the City does not have sufficient knowledge to respond as to every
17 unhoused person in every circumstance and at all times, therefore the City
18 denies Plaintiffs' overly broad and general allegations in paragraph 70.

19 71. The allegations in paragraph 71 relate to a section of the Spokane
20 Municipal Code, which speaks for itself.

1 72. The City denies the allegations in paragraph 72.

2 73. The City denies the allegations in paragraph 73.

3 74. Paragraph 74 does not contain any specific allegations as to the
4 City and is overly generalized and vague.

5 75. Paragraph 75 does not contain any specific allegations as to the
6 City and the City does not have sufficient knowledge to respond as to every
7 unhoused person in every circumstance and at all times, therefore the City
8 denies Plaintiffs' overly broad and general allegations in paragraph 75.

9 76. The City admits that criminal convictions generally are matters of
10 public record.

11 77. Paragraph 77 does not contain any specific allegations as to the
12 City and the City does not have sufficient knowledge to respond as to every
13 unhoused person in every circumstance and at all times, therefore the City
14 denies Plaintiffs' overly broad and general allegations in paragraph 77.

15 78. Paragraph 78 does not contain any specific allegations as to the
16 City and the City does not have sufficient knowledge to respond as to every
17 unhoused person in every circumstance and at all times, therefore the City
18 denies Plaintiffs' overly broad and general allegations in paragraph 78.

19 79. Paragraph 79 does not contain any specific allegations as to the
20 City and the City does not have sufficient knowledge to respond as to every

1 unhoused person in every circumstance and at all times, therefore the City
2 denies Plaintiffs' overly broad and general allegations in paragraph 79.

3 80. Paragraph 80 does not contain any specific allegations as to the
4 City and the City does not have sufficient knowledge to respond as to every
5 unhoused person in every circumstance and at all times, therefore the City
6 denies Plaintiffs' overly broad and general allegations in paragraph 80.

7 81. Paragraph 81 does not contain any specific allegations as to the
8 City and the City does not have sufficient knowledge to respond as to every
9 unhoused person in every circumstance and at all times, therefore the City
10 denies Plaintiffs' overly broad and general allegations in paragraph 81.

11 82. Paragraph 82 does not contain any specific allegations as to the
12 City and the City does not have sufficient knowledge to respond as to every
13 unhoused person in every circumstance and at all times, therefore the City
14 denies Plaintiffs' overly broad and general allegations in paragraph 82.

15 83. The City denies the allegations in paragraph 83.

16 84. The City denies the allegations in paragraph 84.

17 85. Paragraph 85 consists of legal conclusions and legal argument to
18 which no response is required. To the extent a response is required, the City
19 denies the same.

20 86. The City denies the allegations in paragraph 86.

1 87. The City admits the allegations in paragraph 87.

2 88. The allegations in paragraph 88 relate to a section of the United
3 States Code, which speaks for itself.

4 89. The City responds that storage policies vary by shelter and
5 therefore denies the allegations in paragraph 89.

6 **V. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION—VIOLATION OF 42 U.S.C. 1983**
8 **(FOURTH AND FOURTEENTH AMENDMENTS)**

9 90. The City reincorporates its responses as set forth above.

10 91. Regarding the Plaintiffs, the City lacks sufficient knowledge or
11 information to form a belief about the truth of the allegations in paragraph 91
12 and therefore denies the same. To the extent the allegations in paragraph 91 are
13 directed to the City, it denies the same.

14 92. The allegations in paragraph 92 constitute legal conclusions and
15 legal argument to which no response is required.

16 93. The allegations in paragraph 93 constitute legal conclusions and
17 legal argument to which no response is required. To the extent a response is
18 required, the City denies the same.

19 94. The allegations in paragraph 94 constitute legal conclusions and
20 legal argument to which no response is required. To the extent a response is
required, the City denies the same.

1 95. The allegations in paragraph 95 constitute legal conclusions and
2 legal argument to which no response is required. To the extent a response is
3 required, the City denies the same.

4 96. The allegations in paragraph 96 constitute legal conclusions and
5 legal argument to which no response is required. To the extent a response is
6 required, the City denies the same.

7 **SECOND CAUSE OF ACTION—VIOLATION OF 42 U.S.C. 1983**
8 **(EIGHTH AND FOURTEENTH AMENDMENTS)**

9 97. The City reincorporates its responses as set forth above.

10 98. Regarding the Plaintiffs, the City lacks sufficient knowledge or
11 information to form a belief about the truth of the allegations in paragraph 98
12 and therefore denies the same. To the extent the allegations in paragraph 98 are
13 directed to the City, it denies the same.

14 99. The allegations in paragraph 99 relate to a section of the Spokane
15 Municipal Code, which speaks for itself.

16 100. The City denies the allegations in paragraph 100.

17 101. The City lacks sufficient knowledge or information to form a belief
18 about the truth of the allegations in paragraph 101 and therefore denies the same.

19 102. The City denies the allegations in paragraph 102.
20

1 103. The allegations in paragraph 103 constitute legal conclusions and
2 legal argument to which no response is required. To the extent a response is
3 required, the City denies the same.

4 **THIRD CAUSE OF ACTION—CONVERSION**

5 104. The City reincorporates its responses as set forth above.

6 105. The allegations in paragraph 105 constitute legal conclusions and
7 legal argument to which no response is required. To the extent a response is
8 required, the City denies the same.

9 106. The allegations in paragraph 106 constitute legal conclusions and
10 legal argument to which no response is required. To the extent a response is
11 required, the City denies the same.

12 107. The allegations in paragraph 107 constitute legal conclusions and
13 legal argument to which no response is required. To the extent a response is
14 required, the City denies the same.

15 108. The City admits the allegations in paragraph 108.

16 **VI. RESPONSE TO RELIEF REQUESTED**

17 The remaining allegations in Plaintiffs' Complaint constitute a request for
18 relief to which no response is required. To the extent a response is required, the
19 City denies that the Plaintiffs are entitled to any relief.

1 Unless specifically admitted above, the City denies each and every
2 remaining allegation in Plaintiffs' Complaint. The City specifically reserves the
3 right to amend its answer by adding defenses, affirmative defenses,
4 counterclaims, cross claims, or by instituting third party actions, as additional
5 facts are obtained through discovery.

6 **VII. AFFIRMATIVE DEFENSES OF THE CITY**

7 The City incorporates its admissions, denials, and allegations above as
8 though fully set forth herein. Without conceding which party bears the burden
9 of proof and without admitting allegations previously denied, the City asserts the
10 following affirmative defenses:

11 1. Plaintiffs' claims are barred by sovereign immunity. The City is a
12 municipal corporation organized under the laws of the State of Washington.

13 2. Plaintiffs' claims are barred by assumption of risk, waiver,
14 estoppel, and contributory negligence. The City provided Plaintiffs written
15 notice, an opportunity to request assistance or additional time to move,
16 information regarding warming shelters and other services, and an opportunity
17 to move any possessions including on the day of the clean-up. Plaintiffs failed
18 to comply with the notices, request assistance, or take other action to avoid their
19 alleged damages.
20

1 3. Plaintiffs' claims are barred by a failure to mitigate. The City
2 provided Plaintiffs written notice, an opportunity to request assistance or
3 additional time to move, information regarding warming shelters and other
4 services, and an opportunity to move any possessions including on the day of the
5 clean-up. Plaintiffs failed to comply with the notices, request assistance, or take
6 other action to avoid their alleged damages.

7 4. Plaintiffs' claims are barred by the equitable doctrine of unclean
8 hands. The City provided Plaintiffs written notice, an opportunity to request
9 assistance or additional time to move, information regarding warming shelters
10 and other services, and an opportunity to move any possessions including on the
11 day of the clean-up. Plaintiffs failed to comply with the notices, request
12 assistance, or take other action to avoid their alleged damages.

13 **VIII. THE CITY'S PRAYER FOR RELIEF**

14 Wherefore, having fully answered the Complaint and having asserted
15 defenses and affirmative defenses, the City respectfully requests the following
16 relief:

17 1. That Plaintiffs' claims against the City be dismissed with prejudice
18 and with no recovery or relief to Plaintiffs;

19 2. That the Court award the City its reasonable fees, costs, and
20 expenses incurred relative to this lawsuit; and

1 3. That the City be granted any such other relief as the Court deems
2 just and equitable.

3 DATED this 23rd day of August, 2019.

4 PACIFICA LAW GROUP LLP

5 By s/ Shae Blood

6 Gregory J. Wong, WSBA # 39329 *

7 Taki V. Flevaris, WSBA #42555

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10 * WAED admission pending

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

s/ Sydney Henderson
Sydney Henderson, Legal Assistant